Request from Water Division regarding FL Phosphate Project

Brad Jackson to: Randall Chaffins, Derek Matory 02/22/2010 09:01 AM
Cc: Elisa Roberts

From: Brad Jackson/R4/USEPA/US
To: Randall Chaffins/R4/USEPA/US@EPA, Derek Matory/R4/USEPA/US@EPA
Cc: Elisa Roberts/R4/USEPA/US@EPA

Any thoughts on whether or not to comply with this request?

Brad Jackson
USEPA, Superfund Division
61 Forsyth Street, SW
Atlanta, GA 30303
404-562-8925

----- Forwarded by Brad Jackson/R4/USEPA/US on 02/22/2010 08:59 AM -----

From: Jennifer Derby/R4/USEPA/US
To: Paul Gagliano/R4/USEPA/US@EPA, Bethany Russell/R4/USEPA/US@EPA, Brad Jackson/R4/USEPA/US@EPA, Marshall Hyatt/R4/USEPA/US@EPA
Cc: Heinz Mueller/R4/USEPA/US@EPA, Tom Welborn/R4/USEPA/US@EPA, Cecelia Harper/R4/USEPA/US@EPA, Philip Mancusi-Ungaro/R4/USEPA/US@EPA
Date: 02/19/2010 03:25 PM
Subject: FL Phosphate - draft letter requesting area wide EIS
cross media input to letter requested

Hello Bethany, Brad, Marshall -

I have attached a draft letter below (developed by Paul Gagliano, Cecelia Harper, Chris Hoberg and Phil Mancusi-Ungaro and others?) - which is our letter to the Jacksonville Corps of Engineers formally requesting that an area wide EIS be conducted for the phosphate industry in Florida. (see attached NEPA definition from Chris Hoberg below- describing purposes of an area wide EIS).

I think it would be ideal to include 1 or 2 additional sentences from your programs (Superfund, RCRA, NPDES) - describing what you would want addressed in an area wide EIS on phosphate in FL - to document the overall environmental consequences and mitigation for such with this industry.

I will be most grateful if you will provide us with one or 2 sentences that we can add to this letter. We hope to get the letter out by the end of next week (Feb. 25).

Thank you,
Jennifer

Jennifer Derby
EPA Region 4 Water Division
61 Forsyth Street
Atlanta, GA 30303
phone - 404-562-9401
fax - 404-562-9343
email - derby.jennifer@epa.gov

Paul Gagliano Jennifer: I wrote this fairly lengthy draft using ele... 02/18/2010 11:04:16 AM

From:	Paul Gagliano/R4/USEPA/US
To:	Jennifer Derby/R4/USEPA/US@EPA
Cc:	Heinz Mueller/R4/USEPA/US@EPA
Date:	02/18/2010 11:04 AM
Subject:	draft EIS request letter

Jennifer:

I wrote this fairly lengthy draft using elements from the previous letter (which you said dropped the EIS sections). It can get us started.

EIS Letter for COL Pantano.doc

Chris Hoberg's additional paragraphs for letter:

definition area wide EIS paragraphs for letter to Corps.doc

best regards,

Paul

CHRIS H's EDITS TO PAUL'S AREA WIDE EIS LETTER

HOBERG INSERT A (new paragraph #2 on page 1)

An Area Wide (or Programmatic) EIS is broader and more general than an individual project EIS that assesses site-specific direct, secondary (indirect) and cumulative impacts. The Area Wide EIS serves to evaluate overall or area-wide impacts of an industry or region – in this case phosphate mining in the Peace River Watershed. Once the Area Wide EIS is completed, site-specific project impacts can be assessed through individual project EISs or Environmental Assessments (EAs), depending on whether the level of impact of the proposed project is significant or not, respectively. These follow-up NEPA documents would tier from the Programmatic/Area Wide EIS, utilizing its background information where relevant to streamline the NEPA process and emphasizing site-specific impacts of the individual project (mine). Despite the completion of an Area Wide EIS, these individual project NEPA documents still assess the cumulative impacts to the resources within the project area.

HOBERG INSERT B (new para before Cooperating Agency para on page 3)

Historically, the Jacksonville District has already successfully completed a Programmatic EIS for its Comprehensive Everglades Restoration Plan (CERP, formerly known as the "Restudy") in 1999. This Programmatic EIS evaluated the need, type, feasibility and cost of project components recommended for the overall restoration of the Everglades. Since its completion in 1999, many CERP EISs and EAs have tiered from the Restudy for site-specific areas of restoration involving Lake Okeechobee, Indian River Lagoon, Caloosahatchee River, Everglades Agricultural Area, Water Preserve Areas, Florida Bay and many others. While all of these projects were important individually, their need and value was put in perspective by the original Restudy. An Area Wide EIS for the Peace River Watershed, although a smaller area than the Everglades, could have similar context benefits in assessing overall phosphate mining impacts to the region before site-specific mines are further evaluated.

ALSO: Few other letter edits were made on a hard copy placed back on Paul's desk…

Colonel Alfred A. Pantano, Jr.
District Engineer
Jacksonville District Corps of Engineers
701 San Marco Blvd
Jacksonville, FL 32207

Subject: Need for Area Wide Environmental Impact Statement (EIS)
"Bone Valley" Phosphate Mining Region (Peace River Watershed, FL)

Dear Colonel Pantano:

This letter serves as a follow-up to our recent discussions and previous EPA correspondence on the need for an Area Wide Environmental Impact Statement (EIS) for the "Bone Valley" phosphate mining region of central Florida, which is predominantly located within the Peace River Watershed. As you know, EPA has long advocated that an Area Wide EIS be developed by the Jacksonville District, U.S. Army Corps of Engineers (COE), for this important and environmentally sensitive mining region. The need for such an EIS has once again been highlighted because of issues identified during our review of Mosaic Fertilizer's request for a 21 year permit to mine phosphate at the South Fort Meade Mine Extension, and which could potentially impact 511.3 acres of wetlands and 60,430 linear feet of stream channels.

EPA offers the following comments on the need for an Area Wide Environmental Impact Statement (EIS):

The State of Florida and EPA have designated the Peace River Watershed as both a Priority Watershed and an Aquatic Resource of National Importance (ARNI). EPA and the State of Florida have agreed to focus our mutual resources in order to restore impaired waters and protect those waters that are currently meeting water quality standards for their designated uses. Further, the Peace River and its wetlands and tributaries provide freshwater flows to the downstream Charlotte Harbor National Estuary (CHNE), which Congress has designated as an estuary of national significance. Over the past decade, EPA has provided millions of dollars in funding for the restoration of the CHNE, and we continue to be actively involved with local stakeholders in protecting this nationally important aquatic resource. In addition, EPA is fully committed to implementing the Clean Water Act (CWA) in order to protect and restore the chemical, physical, and biological characteristics of all waterbodies in this region.

EPA has substantial concerns with the cumulative impacts and the downstream effects on the CHNE resulting from proposed federal 404 permit actions for mining in the "Bone Valley." Cumulative impacts are the combined, incremental effects of human activity that accumulate and pose a serious threat to the environment over time from one or more sources, and those that can result in the degradation of important resources (e.g. Peace River, CHNE, and drinking water sources). Because federal projects cause or are affected by cumulative impacts, this type of impact must be assessed in documents prepared under NEPA. Addressing cumulative and secondary effects in a piecemeal manner through the regulatory process (i.e., permit by permit) for impacts of

this magnitude, cannot effectively or sufficiently address cumulative impacts to the Peace River Watershed as a whole. An Area Wide EIS could adequately address these cumulative and secondary effects.

The Peace River supplies potable water directly or through purchase to approximately 700,000 citizens, and any water quality deterioration due to mining activities may compromise the public drinking water supplies and adversely impact public health. According to the "Peace River Basin Resource Management Plan" (PRBRM) dated March 2007, the Peace River Manasota Regional Water Supply is located in the lower Peace river basin about 19 miles from the mouth of the river. This facility supplies potable water directly or through purchase to approximately 700,000 citizens. Section 230.50 Subpart F of the Guidelines, entitled "Municipal and Private Waters Supplies," should be considered in making the factual determinations and the findings of compliance or non-compliance with the Guidelines. Since the facility is located in a downstream location within the watershed, activities that have the potential to impact water quality or the natural timing and volume of river flow, have the potential to impact the viability of this public water supply. As stated in the PRBRM, the stressors within some measure of human control include mining, agriculture, and urbanization. The environmental consequences of water quality deterioration and man-induced flow regimes may reduce the ability of the Peace River Facility to meet the drinking water needs of the public, presenting a potential public health issue. Because of the importance of this issue, EPA believes an Area Wide EIS should be developed to clearly understand the implications that will result from modifications to regional hydrology caused by current and reasonably foreseeable future mining.

A large number of Total Maximum Daily Load (TMDLs) have recently been developed by EPA Region 4 for the Peace River Watershed. The prospective Area Wide EIS could address how future mining (and other land use activities) will affect compliance with the loading limits established in these EPA-developed TMDLs. These TMDLs will have to be "implemented" - meaning local governmental jurisdictions will need to enact measures to actually limit loadings of pollutants in impaired waterbodies. Of particular concern are waterbodies that no longer have any "assimilative capacity" for the pollutants. The proposed cumulative impacts of incrementally expanding mines could be analyzed for their effect on phosphorus loadings above natural background levels. Also, cumulative impacts on loading limits established for Total Nitrogen (TN) and Biological Oxygen Demand (BOD) would be assessed. As of September 30, 2009, a number of Peace River Watershed TMDLs have either been proposed or established. These include TMDLs for numerous waterbodies that are impaired due to low dissolved oxygen, biological oxygen demand, nutrients, fecal coliform, iron, silver, etc.

The proposed mining activities may create large berms or stacks of excavated overburden within the floodplain, and these would need to be assessed for National Flood Insurance Program (NFIP) compliance. The NFIP floodplain management criterion has been adopted by all participating cities/counties in the US in their local ordinances (as described in Title 44 of the Code of Federal Regulations, Section 60.3(d)(3). The criterion states that local authorities "shall prohibit encroachments, including fill, new construction, substantial improvements, and other

development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge." The cumulative impacts from numerous berms, stacks, and stockpiles in the watershed could be assessed in the Area Wide EIS.

The Area Wide EIS could assess the cumulative and secondary impacts associated with the redevelopment of former phosphate mining lands into subdivisions, recreational facilities, and commercial/retail uses. The EIS could assess potential radiation issues associated with the many phosphogypsum stacks in the region. According to the most recent figures from the Florida Department of Environmental Protection (FDEP), there are over a billion tons of phosphogypsum stacked across the state and 30 million more tons are generated every year. Because it is radioactive, the reuse of phosphogypsum has been limited. EPA is currently reviewing over 2 dozen former phosphate mining sites as part of its "Florida Phosphate Initiative," and our Superfund database lists numerous former mining sites in the Bone Valley Region. An Area Wide EIS could provide an analysis of which these sites may present increased levels of radiation exposure, particularly in the high growth areas.

EPA Region 4 is willing to serve as a "cooperating agency" to the Jacksonville District on the proposed Area Wide EIS. The role of a federal agency in the National Environmental Policy Act (NEPA) process varies according to the agency's expertise and relationship to the proposed undertaking. In the case of the permit for the South Fort Meade Mine Extension, the Jacksonville District is carrying out a federal action (404 permit) and is responsible for complying with all of the requirements of NEPA. A federal, state, or local agency having special expertise with respect to an environmental issue or jurisdiction by law may serve as a cooperating agency in the NEPA process, and the cooperating agency has the responsibility to assist the lead agency by participating in the NEPA process at the earliest possible time. Historically, EPA's participation as a cooperating agency has included involvement in the scoping process; developing information and preparing environmental analyses including portions of the EIS that concern the cooperating agency and in which our agency has special expertise; and in making our staff available at the lead agency's request in order to enhance their interdisciplinary capabilities.

If you have any further questions, please do not hesitate to give me a call at (404) 562-9470. I would like to set up a teleconference call in the near future between our relevant staff to discuss these issues and how the EIS could best be accomplished.

Sincerely.

James D. Giattina, Director
Water Protection Division